

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 203

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO TAXATION OF RENEWABLE ENERGY PROJECTS; AMENDING SECTION 63-602JJ, IDAHO CODE, TO PROVIDE THAT CERTAIN PROPERTY OF A PRODUCER OF ELECTRICITY BY MEANS OF RENEWABLE ENERGY IS EXEMPT FROM TAXATION AND TO DEFINE "RENEWABLE ENERGY"; AMENDING SECTION 63-3501, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 63-3502B, IDAHO CODE, TO PROVIDE FOR LEVY OF A TAX ON RENEWABLE ENERGY ELECTRICAL PRODUCTION; AMENDING SECTION 63-3503B, IDAHO CODE, TO PROVIDE FOR FILING OPERATORS' STATEMENTS AND THE ALLOTMENT AND APPORTIONMENT OF TAX DUE FROM PRODUCERS OF ELECTRICITY BY MEANS OF RENEWABLE ENERGY BY THE STATE TAX COMMISSION; AMENDING SECTION 63-3504, IDAHO CODE, TO PROVIDE REFERENCES TO A PRODUCER OF ELECTRICITY BY MEANS OF RENEWABLE ENERGY; AMENDING SECTION 63-3505, IDAHO CODE, TO PROVIDE REFERENCE TO A PRODUCER OF ELECTRICITY BY MEANS OF RENEWABLE ENERGY; AMENDING SECTION 63-3506, IDAHO CODE, TO PROVIDE REFERENCE TO A PRODUCER OF ELECTRICITY BY MEANS OF RENEWABLE ENERGY; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-602JJ, Idaho Code, be, and the same is hereby amended to read as follows:

63-602JJ. PROPERTY EXEMPT FROM TAXATION – CERTAIN OPERATING PROPERTY OF PRODUCER OF ELECTRICITY BY MEANS OF ~~WIND ENERGY OR BY MEANS OF GEOTHERMAL~~ RENEWABLE ENERGY. The following property is exempt from taxation: ~~(i) operating property of producers of electricity by means of wind renewable energy exclusively used to produce electricity by means of wind renewable energy on which the tax on gross wind renewable energy earnings will be paid; and (ii) operating property of producers of electricity by means of geothermal energy exclusively used to produce electricity by means of geothermal energy on which the tax on gross geothermal energy earnings will be paid.~~ As used in this section, the term "renewable energy" means energy generated from the following sources: wind energy, geothermal resources, biomass, low impact hydro, solar energy and landfill gas power.

SECTION 2. That Section 63-3501, Idaho Code, be, and the same is hereby amended to read as follows:

63-3501. DEFINITIONS. For the purposes of this chapter:

(a) The term "cooperative electrical association" means any nonprofit, cooperative association organized and maintained by its members, whether incorporated or unincorporated, for the purpose of transmitting, distributing or delivering electric power to its members.

(b) The term "cooperative natural gas association" means any nonprofit cooperative association organized and maintained by its members, whether incorporated or unincorporated, for the purpose of transmitting, distributing or delivering natural gas to its members.

(c) The term "cost of power" means the cost of power purchases and generation included in reports to, and in accordance with applicable requirements of, the rural electrification administration, United States department of agriculture, by cooperative electrical associations which are borrowers from the rural electrification administration, and for cooperative electrical associations which are not borrowers from the rural electrification administration, such costs which could have been included by such cooperative electrical associations using equivalent reporting and accounting requirements. The state tax commission shall prescribe necessary rules for the purpose of providing a uniform method of reporting cost of power purchases and generation by cooperative electrical associations, consistent with the reporting and accounting requirements of the rural electrification administration.

(d) The term "cost of gas" means the cost of natural gas purchased by cooperative natural gas associations from wholesale or other suppliers of natural gas for delivery to members of the cooperative natural gas association.

(e) The term "gross electrical earnings" means the gross receipts of a cooperative electrical association from the distribution, delivery and sale of electric power within the state of Idaho, but shall not include any earnings or receipts from the distribution, delivery or sale of electric power consumed in pumping water for irrigation or drainage purposes within the state of Idaho, upon the land of such consumer and for the use and benefit of his own land, and where such consumer has received from the association a refund, rebate, or credit of three and one-half percent (3 1/2%) of the cost to him of the electric power so used and consumed.

(f) The term "gross natural gas earnings" means the gross receipts of a cooperative natural gas association from the distribution, delivery and sale of natural gas within the state of Idaho.

(g) The term "~~gross wind or geothermal~~ renewable energy earnings" means the gross receipts of a ~~wind~~ renewable energy generator ~~or a geothermal energy generator~~ from the distribution, delivery and sale to a customer for the direct use or resale of electrical energy generated, manufactured or produced by means of ~~wind energy or geothermal~~ renewable energy within the state of Idaho.

(h) The term "operating property" means and includes all real estate, fixtures or personal property owned, controlled, operated or managed by such electrical or natural gas association, or producer of electricity by means of ~~wind energy or geothermal~~ renewable energy, excluding entities that are regulated by the Idaho public utilities commission as to price, in connection with or to facilitate the generation, transmission, distribution, delivery, or measuring of electric power, natural gas, or electrical energy generated, manufactured or produced by means of ~~wind energy or geothermal~~ renewable energy, excluding entities that are regulated by the Idaho public utilities commission as to price, and all conduits, ducts, or other devices, materials, apparatus or property for containing, holding or carrying conductors used for the transmission, distribution and delivery of electric power, natural gas, or electrical energy generated, manufactured or produced by means of ~~wind energy or geothermal~~ renewable

energy, excluding entities that are regulated by the Idaho public utilities commission as to price, including construction tools, materials and supplies.

(i) The term "nonoperating property" means all other property, real or personal, owned, controlled or managed by such electrical or natural gas association.

(j) The term "renewable energy" means energy generated from the following sources: wind energy, geothermal resources, biomass, low impact hydro, solar energy and landfill gas power.

(k) The term "taxing unit" shall include any of the following that had property taxes levied in the prior year: the separate taxing districts of the county as well as the county itself and any such taxing district's fund having a different geographical boundary than such taxing district itself.

(~~k~~l) The term "tax levy" means the total tax levies fixed by each taxing district, as defined herein, in the prior calendar year.

(~~lm~~) The term "WPPSS 4 and 5 costs" means, for a cooperative electrical association which is a participant under the Washington public power supply system nuclear projects numbers 4 and 5 participants' agreement, dated July 14, 1976, all of its costs in connection with Washington public power supply system nuclear projects numbers 4 and 5.

(~~mn~~) The term "weighted wire mileage factor" means a figure which is arrived at by multiplying the tax levy of each taxing unit by the number of wire miles of transmission and distribution lines of such cooperative electrical association situated in such taxing unit.

(~~no~~) The term "gas line mileage factor" means a figure which is arrived at by multiplying the tax levy of each taxing unit by the number of miles of natural gas transmission and distribution lines of such cooperative natural gas association situated in such taxing unit.

SECTION 3. That Section 63-3502B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3502B. LEVY OF TAX ON ~~WIND ENERGY OR GEOTHERMAL~~ RENEWABLE ENERGY ELECTRICAL PRODUCTION. There shall be levied against every producer of electricity by means of ~~wind energy or geothermal~~ renewable energy a ~~wind energy tax or a geothermal~~ renewable energy tax equal to three percent (3%) of such producer's gross ~~wind energy earnings or geothermal~~ renewable energy earnings. This ~~wind energy tax or geothermal~~ renewable energy tax shall be in lieu of all other taxes on the operating property, as defined in section 63-3501(h), Idaho Code, of such ~~wind energy producer or of such geothermal~~ renewable energy producer.

SECTION 4. That Section 63-3503B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3503B. FILING OPERATORS' STATEMENTS – ALLOTMENT AND APPORTIONMENT OF TAX DUE FROM PRODUCERS OF ELECTRICITY BY MEANS OF ~~WIND ENERGY OR GEOTHERMAL~~ RENEWABLE ENERGY BY STATE TAX COMMISSION. Every producer of electricity by means of ~~wind energy or by means of geothermal~~ renewable energy in this state shall file with the state tax commission of the state of Idaho an operator's statement in the manner as provided for in section 63-404, Idaho Code, and shall include thereon a statement of the prior calendar year's gross ~~wind energy earnings or gross geothermal~~ renewable energy earnings. Upon examining and verifying said statement,

the state tax commission shall compute the amount of the ~~wind energy tax or the geothermal~~  
renewable energy tax based on the gross ~~wind energy earnings or the gross geothermal~~  
renewable energy earnings and shall allot to each county in which the operating property of  
such producer is situate either: that proportion of the total ~~wind energy tax or that proportion~~  
~~of the total geothermal~~ renewable energy tax of such producer shown to be due as the same  
proportion that the total original cost of operating property situate in such county bears to the  
total original cost of operating property of such producer for the ~~wind energy project or of such~~  
~~producer for the geothermal~~ renewable energy project. The state tax commission shall then, for  
each county, apportion the ~~wind energy tax or geothermal~~ renewable energy tax so allotted to  
such county among the several taxing units thereof within which any operating property of such  
producer is situate, by apportioning to each such taxing unit that proportion of the ~~wind energy~~  
~~tax or geothermal~~ renewable energy tax so allotted to such county. For such apportionment,  
the state tax commission shall calculate the weighted original cost which shall be the product  
of the original cost of such operating property within such taxing unit times such taxing unit's  
property tax levy for the prior year and the weighted apportionment rate which shall be the  
ratio of the ~~wind energy tax or of the geothermal~~ renewable energy tax as the case may be,  
allotted to such county, to the aggregate weighted original cost for all such taxing units within  
which the operating property is located and then shall calculate the apportionment of the ~~wind~~  
~~energy tax or geothermal~~ renewable energy tax for each such taxing unit to be equal to the  
product of the weighted original cost times the weighted apportionment rate. The state tax  
commission shall, on or before the second Monday in August, notify the state superintendent  
of public instruction, the county auditor, and the county treasurer of such allotment and  
apportionment and the amounts thereof. On or before the third Monday in August, the county  
auditor shall notify the appropriate taxing units of the amount of ~~wind energy tax or the amount~~  
~~of the geothermal~~ the renewable energy tax being apportioned.

SECTION 5. That Section 63-3504, Idaho Code, be, and the same is hereby amended to  
read as follows:

63-3504. COLLECTION BY COUNTY TREASURER – PENALTY AND INTEREST  
IMPOSED WHEN DELINQUENT. Upon receipt of the notification of the allotment and  
apportionment of such taxes by the state tax commission by the county treasurer, said  
county treasurer shall, not later than June 15 of each year, notify each cooperative electrical  
association, natural gas cooperative, and producer of electricity by means of ~~wind energy or by~~  
~~means of geothermal~~ renewable energy, of the amount of taxes owed, and the apportionment  
thereof to the county and to the several taxing districts in the county and such tax shall be due  
and payable not later than July 1, following and, upon the payment thereof, the county treasurer  
shall pay over to each taxing district its apportionment as herein determined. Any such taxes  
not paid by July 1, as aforesaid, shall become delinquent and a penalty of five percent (5%)  
thereof shall be imposed, together with interest at the rate of one percent (1%) per month from  
July 1 until paid.

SECTION 6. That Section 63-3505, Idaho Code, be, and the same is hereby amended to  
read as follows:

63-3505. TAXES A LIEN ON PROPERTY OF ASSOCIATION OR PRODUCER  
UNTIL PAID. All taxes due and payable under this chapter shall be a lien on all property,

1 real and personal, of the electrical, or natural gas association, or the producer of electricity by  
2 means of ~~wind energy or by means of geothermal~~ renewable energy, owing the same, as of June  
3 15 of each year and shall be discharged only by the payment thereof. In any action to enforce  
4 payment of any delinquent taxes due under this chapter, the county prosecuting such action  
5 shall be entitled to a judgment for the reasonable costs of prosecuting such action, as well as  
6 for the delinquent taxes, penalty and interest.

7 SECTION 7. That Section 63-3506, Idaho Code, be, and the same is hereby amended to  
8 read as follows:

9 63-3506. ASSESSMENT OF NONOPERATING PROPERTY BY ASSESSOR. The  
10 nonoperating property of any cooperative electrical or natural gas association, or producer of  
11 electricity by means of ~~wind energy or by means of geothermal~~ renewable energy, shall be  
12 assessed by the county assessor of the county wherein such property is situate, and taxes levied  
13 against the same shall be a lien, and shall be due and payable, in the same manner as are any  
14 other taxes on property.

15 SECTION 8. An emergency existing therefor, which emergency is hereby declared to  
16 exist, this act shall be in full force and effect on and after its passage and approval, and  
17 retroactively to January 1, 2009.